

Compliance with Beneficial Ownership Obligations by Company Service Providers

Thematic Review 2021

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1. EXECUTIVE SUMMARY

During the last quarter of 2021, the FIAU carried out a thematic review to assess the level of compliance with beneficial ownership obligations by the Company Service Providers (CSP) sector. The thematic review was also aimed at gauging the correctness or otherwise, of the FIAU's assessment on the level of effectiveness of CSPs when acting as gatekeepers to prevent the misuse of corporate vehicles to conceal the origin, ownership, and control of illicitly gained assets. The thematic review covered 40 CSPs providing company services to Maltese-registered corporate vehicles and encompassed a review of 930 customer companies in order to test CSPs' adherence with beneficial ownership obligations.

The thematic examinations yielded very positive results. In fact, the results indicated that most CSPs are compliant with their beneficial ownership related obligations, and non-compliance was limited to exceptional cases. It was also positively noted that no systematic breaches were identified at the individual CSP level and within the CSP sector throughout the thematic review. The CSPs subject to the thematic review have demonstrated that they have established adequate written policies and procedures, which stipulate how beneficial ownership related obligations are to be fulfilled. Furthermore, albeit minor exceptions, robust beneficial ownership identification and verification procedures are embedded in the examined CSPs' Anti Money Laundering and Counter Funding of Terrorism (AML/CFT) control framework and extensive checks are applied to independently verify the ownership and control structure of the customer company for the purpose of understanding the link between the customer and the beneficial owner. The FIAU has also concluded that there is better compliance by CSPs in the application of beneficial ownership obligations for recent business relationships, with past shortcomings being addressed by CSPs through ongoing monitoring or self-imposed remedial action.



2. SCOPE OF THEMATIC REVIEW

CSPs play a crucial role in preventing persons from using the financial system and corporate vehicles for the purpose of Money Laundering and Funding of Terrorism (ML/FT). In this respect, CSPs are required to implement robust AML/CFT control frameworks in line with the requirements stipulated in the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) and as further elaborated in the Implementing Procedures (IPs) Part I and Part II issued by the FIAU, allowing them to act as effective gatekeepers in combatting ML/FT.

In the last quarter of 2021, a thematic review was undertaken by the FIAU to assess compliance with beneficial ownership obligations by CSPs in accordance with the requirements stipulated in the PMLFTR.

Beneficial Ownership Related Obligations Tested during the Thematic review

Regulation 7(1)(a) and 7(1)(b)

The identification and verification of beneficial owners of a body corporate, foundation, trust, or similar legal arrangement through obtaining documents, data, and information from reliable and independent sources and the carrying out of independent checks to understand the ownership and control structure of the customer.

Regulation 7(1)(a)

Carrying out checks with respect to corporate entities incorporated in the European Economic Area (EEA) and to legal arrangements administered in the EEA to ascertain that beneficial ownership data has been duly registered with a designated beneficial ownership register.

Regulation 7(2)(b)

Carrying out ongoing monitoring to ascertain that data, documents and information on beneficial ownership is kept up to date.

Regulation 8(1)

The identification and verification of beneficial owners is carried out prior to the establishment of a business relationship or the carrying out of an occasional transaction.

Regulation 15(3)

The application of procedures to consider and assess whether information available in relation to a business relationship or an occasional transaction gives rise to knowledge or suspicion of ML/FT, including potential beneficial ownership concealment indicators, and if applicable, file a STR with the FIAU.

“ CSPs play a crucial role in preventing persons from using the financial system and corporate vehicles for the purpose of ML/FT. ”

3. THE MALTESE CSP SECTOR

CSPs are natural and legal persons providing corporate services, by way of business, to third parties including formation of companies, directorship services, company secretary services and provision of registered office services. The CSP Act is the main legislation that regulates CSPs providing services in Malta. In terms of the CSP Act, the MFSA is the competent authority in Malta responsible for granting authorisations to persons seeking to act as a CSP and to monitor the way CSPs conduct their business. In accordance with Article 5(2A) of the CSP Act, the MFSA classifies CSP authorisations in:

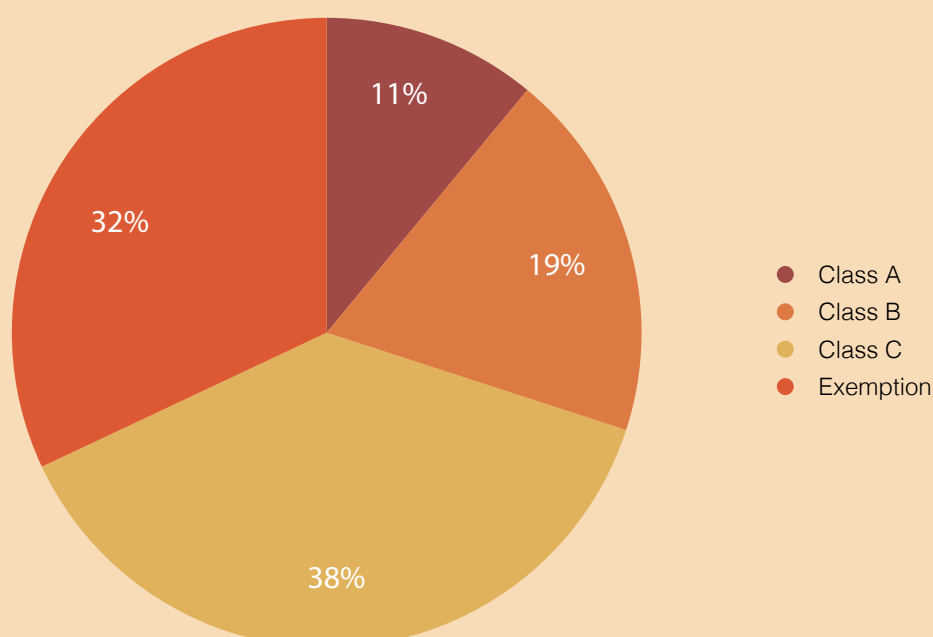
a) **Class A CSPs** – A CSP authorised to provide services related to formation of companies or other legal entities and/or provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership, or any other legal entity.

b) **Class B CSPs** – A CSP authorised to act as, or arranging for another person to act as, director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities.

c) **Class C CSPs** – A CSP authorised to provide all the services of a CSP specified under article 2(1) of the CSP Act.

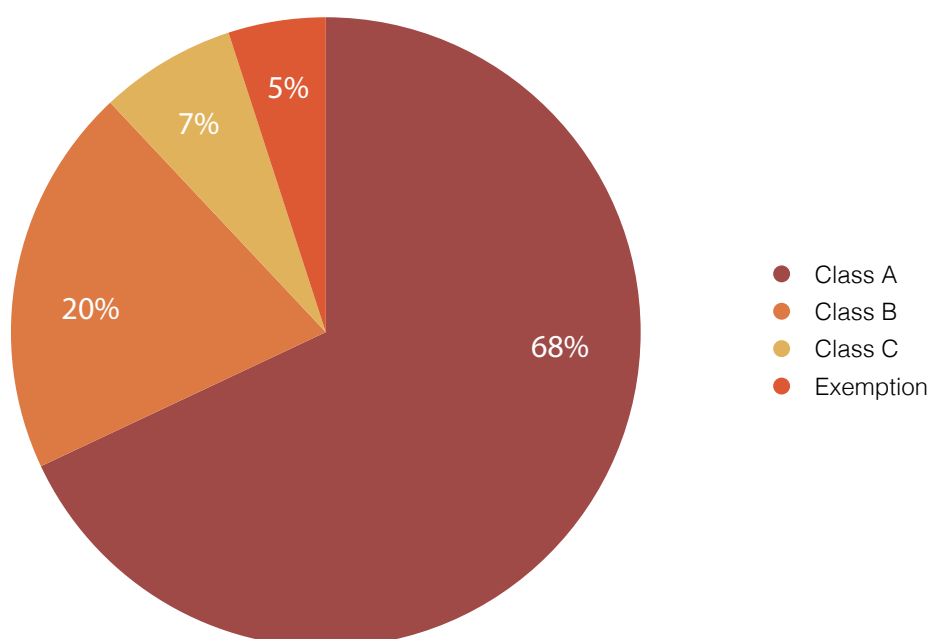
Furthermore, Regulation 3(1) of the Company Service Providers (Exemption) Regulations exempts persons authorised to act as a trustee or to provide other fiduciary duties in terms of the Trust and Trustee Act and persons registered to act as a Virtual Financial Assets (VFA) Agent in terms of the VFA Act from the requirement of authorisation under the CSP Act. As evidenced in the chart below, most CSPs hold a Class C authorisation.

CSP Authorisation Type

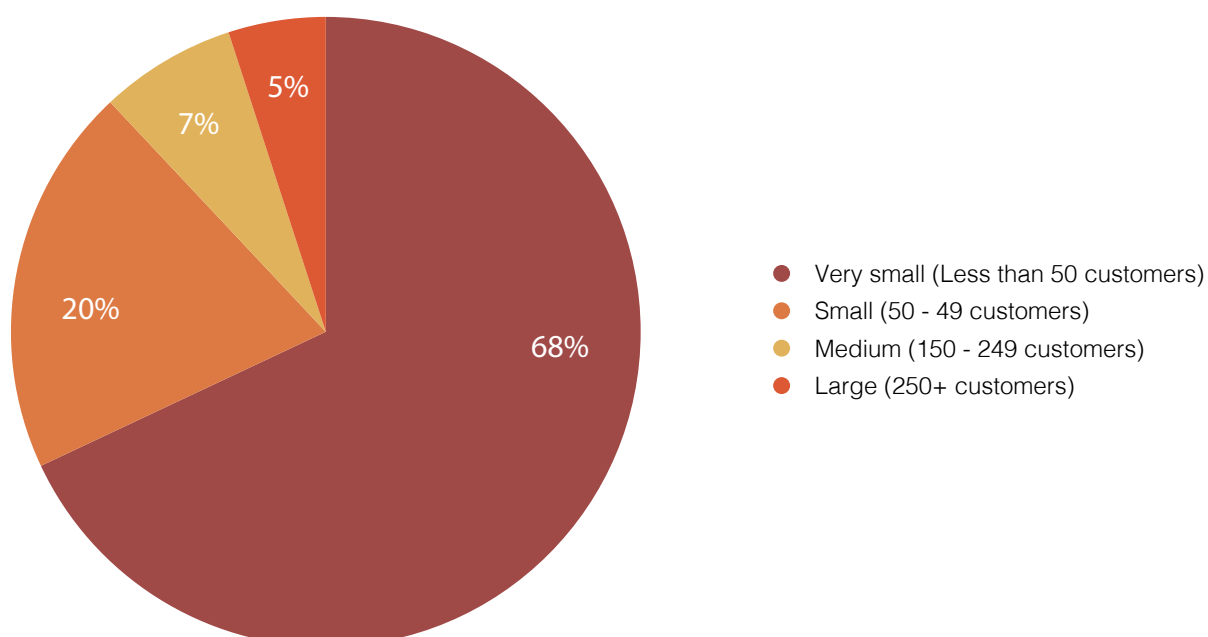


As at end of December 2021, the CSP sector consisted of approximately 330 CSPs, of which 37.5% were natural persons and 62.5% were legal persons. The vast majority of CSPs in Malta are classified as 'very small' or 'small' and service less than 150 customers. Only 5% of CSPs are considered as being large CSPs and servicing more than 250 customers. Information collected by the FIAU also indicates that during 2020, the provision of registered office address was the most frequently provided service by CSPs.

CSP Size



Corporate Service Type



4. BENEFICIAL OWNERSHIP THEMATIC APPROACH

As part of its AML/CFT supervisory function, the FIAU carries out thematic examinations targeting specific aspects of the subject persons' AML/CFT control framework. Thematic examinations are an effective tool used to assess compliance with specific AML/CFT obligations at the individual subject person level as well as to analyse and compare results amongst a peer group of subject persons. The thematic review consisted of a total of 40 compliance examinations on CSPs which focused on assessing compliance with beneficial ownership obligations. During the thematic review, a total of 933 customer relationships (Maltese registered companies) serviced by the 40 CSPs were examined. Most companies examined were owned by foreign BOs (90%).

Prior to selecting the 40 CSPs subjected to the thematic review, the FIAU assessed risk data available to select CSPs that were exposed to higher risks, in particular risks related to beneficial ownership. The risk assessment process is explained in the diagram hereunder.



Risk Assessment Process

Data Collection

Risk data is collected from various sources through the FIAU's CASPAR. CASPAR supports the FIAU's risk-based approach to monitoring subject persons' compliance with AML/CTF obligations. Through CASPAR, information from various sources, including subject persons themselves, the FIAU's Intelligence Analysis Section, prudential regulators, and adverse information, amongst other sources, is collected to risk assess and assign a risk rating to each subject person. Risk data is collected annually but updated on an ongoing basis as soon as new risk data is received by the FIAU's Supervision Section.

Data Analysis

The selection of the 40 CSPs subject to the BO thematic review was determined following a thorough analysis of risk data available on CASPAR. The data considered was mainly derived from CSPs themselves, the FIAU's Intelligence Analysis Section and information from other competent authorities.

CSP Selection

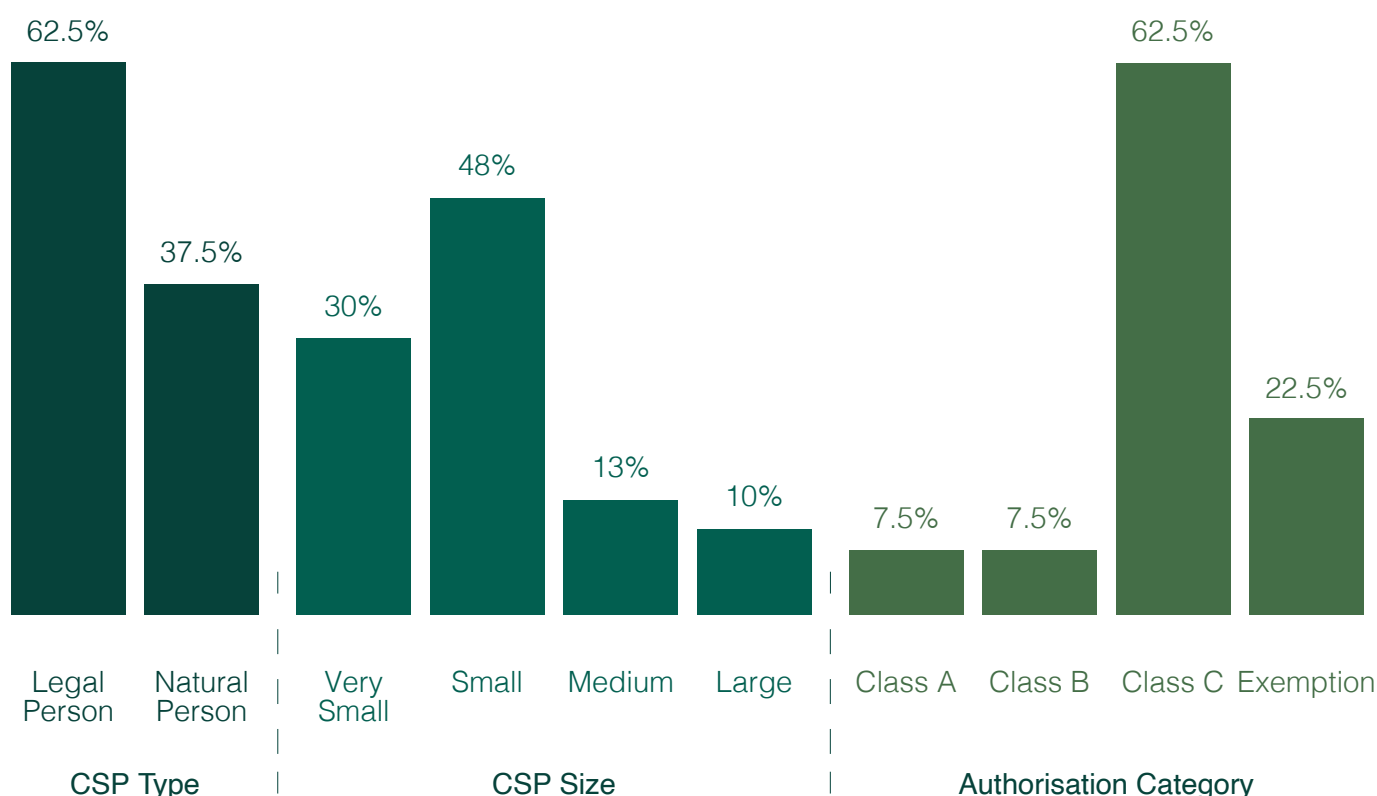
A sample of 40 CSPs was selected following analysis of the risk data. The CSPs were subsequently subject to a compliance examination focusing on BO obligations.

Examples of risk data considered:

- CSPs servicing customers which were mostly owned by foreign BOs
- Customers serviced are assessed by the CSPs themselves as being high-risk
- CSPs servicing customers with an ownership and control structure involving offshore vehicles, trusts, foundations or other similar legal arrangements, nominee shareholding, charities and non-profit organisations
- CSPs offering services to customers acting as holding companies with subsidiaries or investments in non-EU jurisdictions
- CSPs servicing customers who did not file financial statements in the previous calendar years
- CSPs with limited resources and weaker governance structures
- CSPs who never filed an STR
- CSPs flagged by the FIAU's Intelligence Analysis Section for being potentially non-compliant with their BO-related obligations
- CSPs servicing companies whose beneficial owner information, as per the CBAR is different from that reported in the beneficial owner register maintained by the MBR
- CSPs linked to companies in respect of which MBR needed to correct information on multiple occasions
- CSPs who serviced defunct companies (not carrying on business or is not in operation)

As shown in the graph below, in its selection, the FIAU also aimed to have a sample that would be representative of the CSP sector in terms of CSP type (that is, natural or legal person), CSP size and CSP authorisation category.

CSP Selection



Each CSP examined underwent two main testing phases, namely:

1) The controls design testing

The CSP was assessed on the design of its controls, policies, and procedures in place to address beneficial ownership related obligations and ensure compliance thereto. This phase mainly consisted of an interview with the CSP's MLRO, and other members of management (as the case may be), and a thorough review of the CSP's written policies and procedures.

2) The controls implementation effectiveness testing

The FIAU assessed whether the controls put in place to fulfill beneficial ownership related obligations were effectively implemented by the CSP. A sample of approximately 25 corporate customer relationships was selected from the customer list submitted by each CSP. The list indicated the customers currently being provided with CSP services, as well as those with whom the business relationship was suspended, closed, or terminated within the last five years prior to the examination. During this phase of testing, the CSP was requested to provide information and documentation for every customer that formed part of the sample within 24 hours from notification. The information and documentation were analysed to assess adherence by the CSP with the obligations under review. Where deemed necessary, the CSP was also requested to submit further information and/or documentation to clarify any matters arising from the analysis carried out.

5. BENEFICIAL OWNERSHIP DEFINITION



In cases where a customer is a body corporate, foundation, trust or similar legal arrangement, subject persons are required to identify the BO and to take reasonable measures to verify their identity to ensure that the subject person is satisfied of knowing who the BO is. Regulation 2(1) of the PMLFTR defines a BO as:

- a) Any natural person or persons who ultimately owns or controls the customer, and/or
- b) The natural person or persons on whose behalf a transaction or activity is being conducted.

The definition then set out who is considered as the BO for different kinds of body corporates and legal arrangements.

Section 4.2.2.1 of the IPs clarifies the definition of a “beneficial owner” and specifies three different tiers in which a natural person(s) can own or control a customer that is a body corporate or a body of persons. The three tiers of beneficial ownership, which are based on the EU’s Anti Money Laundering Directive (AMLD) and mirror the FATF requirements, are summarized in the diagram below.

When the customer of the subject person is a trust, the requirements are to consider the settlor, trustee(s), protector (where applicable) and the beneficiaries as the beneficial owners. In instances where the beneficiaries are yet to be determined, the subject person is required to identify the class of persons in whose main interest, the trust is set up or operates. The subject person is also required to identify any other natural persons vested with control over the trust, which may be exercised directly, indirectly or through other means.

Similarly, when the customer of the subject person is a legal entity other than those mentioned above, such as foundations or legal arrangements similar to a trust, administering and distributing funds, the subject person must identify any natural persons holding equivalent or similar positions to those identified in the previous paragraphs with respect to trusts.

Body corporate or body of persons

The 3-tier beneficial ownership test

Tier 1

Subject persons need to identify any natural persons who control the legal person (customer) through ownership by means of holding, directly or indirectly, 25% plus one of the shares, or more than 25% of the voting rights or of the ownership interest in the customer.

Tier 2

Once control through ownership has been considered as set out in Tier 1, subject persons need to identify any natural persons who control the legal person through other means. Tier 2 must be applied in two situations:

- When no individual under Tier 1 could be identified; and
- When although an individual under Tier 1 was identified, the subject person has reason to believe that another person(s) is/are exercising ultimate control over the running of the body corporate or its management through means other than ownership.

Control through means other than ownership cannot fall within a single definition and subject persons must decide on a case-by-case basis.

Tier 3

If after having exhausted all possible means and provided there are no grounds of suspicion, no BO is identified in accordance with Tier 1 and/or Tier 2, the natural person(s) who hold(s) the position of senior managing official(s) of the customer should be identified as the BO.

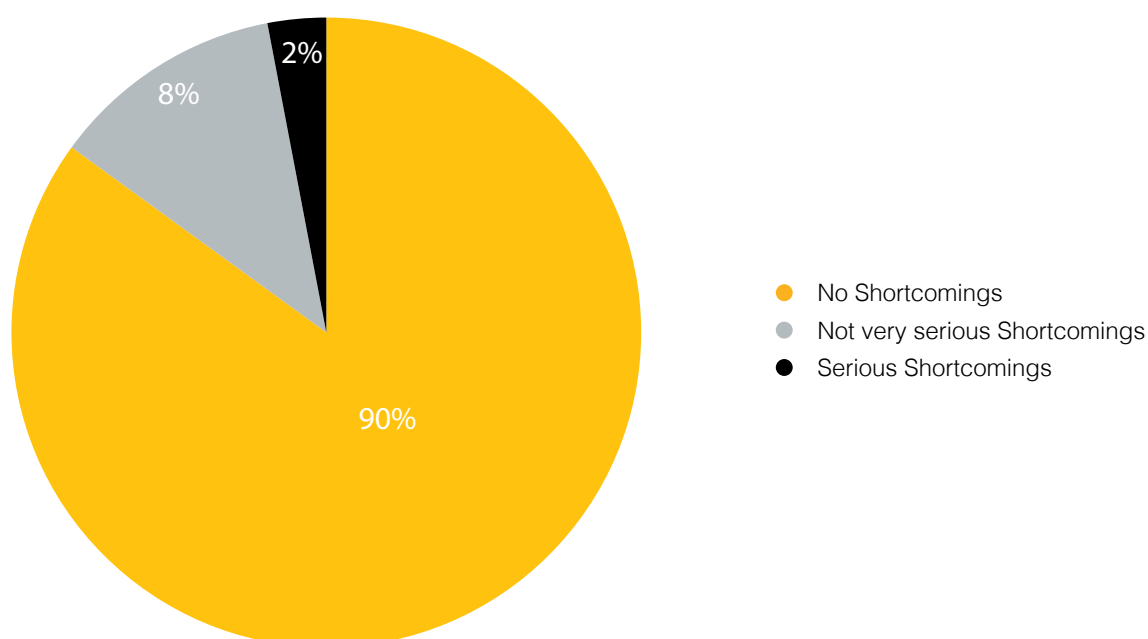
6. KEY FINDINGS FROM THE THEMATIC REVIEW

Overall Analysis

The analysis of findings identified from the thematic review positively concluded that most CSPs are compliant with their beneficial ownership related obligations. In cases where CSPs were found to be non-compliant with their beneficial ownership related obligations, non-compliance was limited to exceptional cases, and no systematic breaches were identified throughout the thematic review, whether at the individual CSP level or within the CSP sector overall. In fact, from the analysis of the 933 business relationships (customers) reviewed during the thematic review, the FIAU concluded that CSPs have established and implemented adequate and effective procedures to fulfil their beneficial ownership related obligations. Furthermore, it was positively noted that in 90% of the business relationships tested, the FIAU did not identify any shortcomings in this regard. Furthermore, in 8% of the business relationships tested the FIAU identified shortcomings that were not of a very serious nature. It was only in 2% of the customers tested that the FIAU noted very serious breaches of beneficial ownership related obligations.

This result highlights the effectiveness of CSPs in acting as gatekeepers in preventing the misuse of corporate vehicles by individuals to launder money derived from criminal activities or to conceal the ownership or control any illicitly gained assets. The high effectiveness of the CSP sector's role as a gate keeper for ML/FT is clearly demonstrated by the fact that the CSPs were able to provide all the necessary documents and information requested by the FIAU, within the short time frames provided. Despite the short notice, CSPs were able to submit extensive information and/or documentation to demonstrate compliance with beneficial ownership obligations during the examinations carried out.

Findings Identified



Key Findings: Policies and Procedures

The FIAU carried out checks to determine whether the CSPs under review had developed adequate policies and procedures in accordance with Regulation 5(5)(a) of the PMLFTR and Section 3.4 of the IPs that define how to meet BO-related obligations.

What are the findings?

- 100% of CSPs have established written policies and procedures that stipulate how beneficial owner related obligations are to be fulfilled. Furthermore, the examiners concluded that the written policies and procedures, are, in general, sufficiently comprehensive, and robust to enable CSPs to comply with beneficial ownership related obligations.
- The written policies and procedures of 4 CSPs did not address the requirement to obtain proof to confirm that beneficial ownership information had been duly registered with the designated beneficial ownership register. This is required when the customer is a body corporate, a body of persons or any other form of legal entity incorporated in a Member State or a trust or a similar legal arrangement administered in a Member State, and therefore is subject to the registration of beneficial owner information (as per the second proviso to Regulation 7(1)(a) of the PMLFTR introduced through Legal Notice 26 of 2020 on 20 February 2020). However, in these cases the FIAU noted that in practice, proof of beneficial ownership registration had been obtained by the CSPs concerned. In view of this, the FIAU requested that the CSPs update their written procedures to address this requirement. They are to include a description of the method applied to check that proof of beneficial ownership information had been duly registered with a designated beneficial ownership register, the timing when the checks are to be carried out and any ongoing monitoring checks to be carried out in this regard. This is required to ensure that CSP officers and employees are aware of this obligation and that procedures are applied consistently.

What can CSPs do better?

- CSPs need to ensure that the written policies and procedures are subject to regular review to make sure that that these reflect any changes in the CSP's activities and legislative changes. Furthermore, CSPs need to take the necessary steps to inform their officers and employees of updates and/or changes in procedures, and what is expected of them when applying them.
- Taking into consideration the nature and size of the business when reviewing the application of policies and procedures. This ensures that the latter are effective in addressing the risks which CSPs are exposed to.

Key Findings: Customer Due Diligence Identification and Verification

Regulations 7(1)(a) and 7(1)(b) of the PMLFTR and Section 4.3.2.1 of the IPs set out that when the customer is a body corporate, foundation, trust and similar legal arrangement, customer due diligence procedures are to include:

a) Understanding the **ownership and control structure** of the company for the purpose of determining whether the individual identified as the BO does in fact benefit from the beneficial ownership of the company. To comply with this obligation, the subject person should obtain from the customer an explanation of the company's ownership and control structure. Once the explanation is obtained, the subject person is required to conduct independent research to verify the information on the corporate structure by consulting online commercial databases, company registers, relevant audited accounts or by obtaining certification by persons referred to under Section 4.3.1.2(i)(b) of the IPs.

b) Once the BO is established, the subject person is to obtain the personal details of the BO and **verify the identity** details by referring to appropriate independent and reliable sources. The identification details include the BO's official full name, the place and date of birth, the permanent residential address, the identity reference number (where available) and the nationality.

c) If the customer is incorporated in a Member State that is subject to the registration of beneficial ownership information, obtaining proof that beneficial ownership information has been duly **registered with a designated beneficial ownership register**.



🔍 What are the findings?

- The thematic review concluded that the 40 CSPs examined have robust beneficial ownership identification procedures embedded in their AML/CFT control framework. It was positive to note that in 100% (933) of the business relationships tested, there were no cases where the BO/s of the customer (i.e., the body corporate, body of persons, trust or similar legal arrangement) was/were unknown to the CSP. This confirms the fact that **the CSP sector has no appetite to onboard customers where the identity of BO/s is unknown.**
- The thematic review also concluded that **CSPs apply extensive checks to independently verify the ownership and control structure** of the customer for the purpose of understanding the link between the customer and the BO. In only 29 cases (3.1%) did examiners identify shortcomings in this regard. However, it is worth mentioning that the shortcomings were mostly limited to:
 - CSPs failing to retain evidence of the independent checks carried out to verify non-complex ownership and control structures. In fact, independent checks carried out by the FIAU concluded that the structures **identified were the same as those outlined in organigrams** obtained directly from the customers by the CSP.
 - In the case of complex structures, whilst CSPs demonstrated that they always collect an organigram from the customer outlining the ownership and control structure, in certain instances, CSPs failed to independently verify the link between each layer in the structure. For example, for a structure comprising 8 layers, the CSP obtained independent verification documents for 6 layers or the verification documents for some layers were not deemed to meet the 'independent' criteria by the examiners. This means that there were **no cases where complex ownership and control structures were not independently verified in their entirety.**
- CSPs were clearly aware that recognising the senior managing official of the customer as the BO is resorted to only after thorough checks that there is no natural person who exercises control on the customer via other means (Tier 2). Despite this, in 13 business relationships, the **FIAU expected the CSP concerned to carry out more robust checks in this regard, prior to resorting to the Tier 3 BO determination.** While the FIAU expected these CSPs to carry out better checks in assessing whether there was anyone qualifying as BO under Tier 2, the FIAU also noted that the CSPs concerned usually had extensive verification documentation on anyone who could qualify in this manner. Thus, they would know the identity of any such individual(s) but failed to thoroughly assess their links with the customer, opting instead to apply Tier 3.
- **CSPs have detailed procedures on how to verify the identity details of BOs.** These procedures were assessed as being applied adequately and consistently by CSPs. In fact, BO identity verification documentation from independent and reliable sources was obtained by the larger majority of CSPs prior to establishing a business relationship. In only 26 business relationships tested (2.8%) was this not the case. In these 26 instances the concerns were mostly related to obtaining BO identity verification documents a few months late and failure to verify the residential address of the BOs.
- CSPs also provided evidence that they are compliant with the recent obligation that came into force in February 2020 requiring subject persons to obtain proof that **beneficial ownership information was registered with a designated beneficial ownership register.** In only 17 companies (just 1.8% of the total sample size) serviced by 4 CSPs, did examiners conclude that this obligation was not fulfilled. Nonetheless, it was positive to note that this shortcoming was not systematic and was limited solely to a few customers tested in the samples selected for each of the 4 CSPs. The CSPs concerned provided evidence that they had adopted procedures to address this requirement. In addition, independent checks carried out by the FIAU concluded that beneficial ownership information was registered with the MBR.
- It is also worth mentioning that **CSPs were more compliant with BO identification and verification obligations in relation to recent business relationships** (that is, customers onboarded 1-3 years prior to the thematic review) as opposed to older business relationships. However, in cases where CSPs had shortcomings concerning older business relationships, these shortcomings were mostly addressed at the time of the examination. This demonstrates the investments that CSPs have made in recent years to better comply with their beneficial ownership obligations.



💡 What can CSPs do better?

- While obtaining an organigram from customers to explain the ownership and control structure of the customer is a good starting point for the purpose of establishing the link between the customer and the BO/s, this procedure cannot be taken to be an independent verification measure. Therefore, CSPs should subsequently conduct independent research to verify the information on the structure chart. This can be done by consulting online commercial databases, company registries, relevant audited accounts or by obtaining certification by any of the persons referred under Section 4.3.1.2(i)(b) of the IPs.
- Recognising the senior managing official as the BO of the customer in terms of Tier 3 should only be resorted to after exhausting all possible means to identify a BO in accordance with Tier 1 and Tier 2 and if there are no grounds of suspicion. A record of the actions taken to try to identify a BO in terms of Tier 1 and Tier 2 should be retained by the CSP as part of its recording keeping obligations.
- Whilst the obligation to know who the BO/s of a customer is/are, is a more serious obligation when compared to verifying the identity details of the BO/s, the importance of the latter obligation should not be underestimated. CSPs need to ensure that their written procedures define which sources meet the criteria of 'independent' and 'reliable' when obtaining identity verification documentation and ensure that officers and employees are aware of these procedures. All BO identity details as per Section 4.3.1 (i) of the IPs should be verified, although in low-risk situations, the BO's official full name, date of birth and permanent residential address can suffice.

Key Findings: Customer Due Diligence

Ongoing Monitoring of Business Relationships ¹

As part of the ongoing monitoring obligations referred to in Regulation 7(2)(b) of the PMLFTR, subject persons are expected to ensure that documents, data or information obtained in fulfilment of customer due diligence obligations under Regulation 7(1)(a) and Regulation 7(1)(b) of the PMLFTR are kept up to date. In this respect, the revised IPs dated October 2021 have also clarified the ongoing monitoring obligations on beneficial ownership information. From time-to-time changes can take place within the shareholding or structure of a body corporate; these may result in a change in beneficial ownership. Due to this there is the need for subject persons to, at points enquire whether the beneficial ownership information obtained at on-boarding is still current or otherwise, unless the subject person is aware of these changes due to assistance in implementing them. To this end, as part of the thematic review, the FIAU carried out checks to assess whether documents, data and information relating to beneficial ownership held by CSPs were kept up to date.

¹ This requirement is only applicable to business relationships and does not apply to occasional transactions



What are the findings?

- The FIAU concluded that the majority of CSPs have adequate mechanisms in place to detect changes in beneficial ownership. In fact, in cases where updating of beneficial ownership information is not prompted by trigger events (e.g., CSP was involved in share transfer), CSPs have effective procedures in place to review the accuracy of beneficial ownership information by means of periodic reviews. It was also noted that CSPs apply risk-based periodic reviews, with business relationships assessed to have a higher risk ML profile being subject to more frequent periodic reviews.
- The FIAU acknowledges that CSPs have been applying more effective ongoing monitoring procedures in the 2 years prior to the thematic review in comparison with previous years. In fact, examiners noted that, in those instances where beneficial ownership information as retained by CSPs was inaccurate and/or outdated for some years, this was ultimately remediated by the CSPs concerned during the past 1-2 years. This clearly indicates the CSP sector's commitment to enhance its procedures to ensure that the accuracy of beneficial ownership information is at the fulcrum of its AML/CFT control framework.
- In only 3 companies tested (0.03%), all serviced by the same CSP, did the FIAU find evidence that beneficial ownership information was not kept up to date. In these cases, the companies concerned were subject to share transfers at least 2 years prior to the compliance examination. This resulted in changes in beneficial ownership, and the CSP had failed to update its records accordingly, even 2 years later.
- In a further 12 companies, serviced by 3 different CSPs, even though the FIAU had no explicit evidence that the companies concerned were subject to changes in beneficial ownership, the FIAU expected the CSP concerned to carry out better checks to ensure that beneficial ownership information was still valid. For instance, the FIAU noted that:
 - A CSP servicing a collective investment scheme considered the BOs to be the founder shareholders, since no further investors had yet subscribed to the scheme's units at the commencement of the business relationship. The FIAU expected checks to be made to determine whether subscriptions in the scheme's units during the business relationship may have resulted in further natural person/s meeting the definition of a BO, but the CSP failed to apply any checks.
 - Similarly, a CSP who serviced body corporates with shares held in a trust with non-determined beneficiaries, concluded the BO to be the senior managing official of the customer company. This since no BOs were determined under tier 1 and tier 2 at customer onboarding stage. The examiners noted that ongoing monitoring checks were not always carried out to determine whether any beneficiaries of the trust were determined during the business relationship and which could potentially make them BOs of the body corporate.

What can CSPs do better?

- Establishing the validity of beneficial ownership information requires CSPs to apply ongoing monitoring methods in this regard. When CSPs opt to apply periodic reviews, it is important that the frequency of reviews is based on the level of customer risk assessed by the CSP in line with the risk-based approach concept. In particular, when changes in beneficial ownership are expected to take place during a business relationship due to the nature of the customer (e.g., a recently set-up collective investment scheme) or due to information available (e.g., customer advising during on-boarding stage on a planned share transfer), it is of utmost importance that the frequency of periodic reviews reflect these expectations.
- In case of business relationships assessed to pose higher risks, reviewing the validity of beneficial ownership information as part of ongoing monitoring procedures needs to include obtaining fresh independent documentation from reliable sources, rather than relying solely on customer declarations. The level and type of Customer Due Diligence (CDD) to be applied must always be commensurate with the assessed risks.
- CSPs need to obtain proof that any identified changes in beneficial ownership information were communicated accordingly to the designated company register by the customer.

Key Findings: Reporting

In accordance with Regulation 15(3) of the PMLFTR, where the subject person knows, suspects or has reasonable grounds to suspect that funds are the proceeds of criminal activity or are related to funding of terrorism, or that a person has been, is or may be connected with money laundering or the funding of terrorism, or that an attempt has been made to carry out a transaction or activity related to such proceeds or funding of terrorism, that subject person is obliged to promptly disclose that information to the FIAU. While corporate vehicles such as companies, partnerships and foundations are important for supporting commercial and economic growth, they may also be abused by criminals to conceal the origin, ownership and control of illicitly gained assets. It is therefore essential for CSPs to remain vigilant and attentive to indicators of potential beneficial ownership concealment and to promptly report any knowledge or suspicion in this regard to the FIAU.

What are the findings?

- From the 933 customer relationships tested, the FIAU only identified 9 cases (0.96%) with red flags of potential beneficial ownership concealment. In these cases, the FIAU deemed that there were reasonable grounds for the CSPs to suspect beneficial ownership concealment, which today cannot be considered to have a legitimate justification and an STR should have been submitted to the FIAU.

What can CSPs do better?

- It is fundamental that CSPs familiarise themselves with beneficial ownership concealment red flags which may become apparent during the provision of CSP services. Whilst not all red flags may eventually lead to reasonable grounds to suspect beneficial ownership concealment, it is nonetheless crucial that these red flags are adequately considered and scrutinised by CSPs. It is necessary to determine whether in the light of all the relevant information, there is knowledge or suspicion that a person is misusing corporate vehicles to conceal the ownership and control of assets which today would be equivalent to knowledge or suspicion of ML. It is strongly recommended for CSPs to review the joint FATF/Egmont Group report “Concealment of Beneficial Ownership” (July 2018) which includes a list of indicators of concealed beneficial ownership, the “Intelligence Factsheet: The misuse of corporate vehicles in Malta, with a focus on beneficial ownership concealment” published by the FIAU in December 2021 and the recording of the training session delivered by the FIAU on the “Concealment of Beneficial Ownership” in November 2021.
- In the context of the thematic review carried out by the FIAU, the typical red flags which gave rise to suspicion of beneficial ownership concealment, included the ones listed hereunder.

BO Concealment Identified During the BO Thematic Review



Indicators from the BO
and connected persons'
background

- Adverse information on persons connected to the declared BO (e.g., spouse involved in criminal activities)
- Adverse information on previous shareholders with a share transfer occurring as soon as this information is made public
- Adverse information on companies owned by persons connected with the declared BO, with these companies being involved in the same line of business as that of the CSP's customer
- Declared BO does not appear to have knowledge/experience on the activities of the customer company, unlike the connected persons



Communication between
customer and CSP

- Customer advises of a change in declared BO amid the incorporation of a company
- CSP is first approached by a person connected with the declared BO to set-up a company and the BO never communicated with the CSP during the business relationship. The behaviour of the contact person being more similar to that of a BO rather than to that of an intermediary
- Following a share transfer, CSP still receives instructions on the customer's behalf from the previous owners (e.g., power of attorney in favour of previous BOs)
- The customer is reluctant to provide information (e.g., verification documents on the company's structure)



Indicators from documents and
information available

- There are indications that the funds to set-up and run the company's activities do not originate from the declared BO.
- The structure of the company is unnecessarily complex without sufficient business rationale
- The customer company has never filed its annual statutory financial statements or tax returns since inception
- Introduction of new shareholders to dilute shareholding to less than 25% + 1 with no apparent justification
- A person is acting as a signatory to company accounts without sufficient explanation or links to justify their role as such
- Company receives significant capital following incorporation, which is subsequently transferred elsewhere within a short period of time without commercial justification
- Payments on behalf of the customer company made from persons related to the BO
- Large and repeated transactions involving transfer of high-value assets between the declared BO and related persons

8. GLOSSARY

AML/CFT	Anti-Money Laundering and Counter Funding of Terrorism
AMLD	Anti-Money Laundering Directive
BO	Beneficial owner or beneficial ownership
CBAR	Centralised Bank Account Register
CDD	Customer due diligence
CASPAR	Compliance and Supervision Platform for Assessing Risk
CSP	Company Service Provider
CSP Act	Company Service Providers Act Cap. 529
FATF	Financial Action Task Force
FIAU	Financial Intelligence Analysis Unit
IPs Part I	Implementing Procedures Part I
IPs Part II	Implementing Procedures Part II Corporate Service Providers
MBR	Malta Business Registry
MFSA	Malta Financial Service Authority
MLRO	Money Laundering Reporting Officer
ML/TF	Money laundering and terrorist financing
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
STR	Suspicious transaction report
VFA Act	Virtual Financial Assets Act Cap. 590

*The data and information contained in this document are considered as correct at the time of publication.

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Questions on this document or on the application of AML/CFT measures may be sent to **queries@fiaumalta.org**

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